DOCUMENT RESUME

ED 328 379 RC 017 970

- AUTHOR Barlowe, Raleigh
TITLE Who Owns Your Land?
INSTITUTION Michigan State Univ., East Lansing. Cooperative Extension Service.; Southern Rural Development Center, Mississippi State, Miss.
REPORT NO SRDC-126
PUB DATE Mar 90
NOTE 13p.
PUB TYPE Historical Materials (060)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Civil Liberties; *Government Role; *Land Use; Public Policy
IDENTIFIERS Legal History; Private Property; *Property Rights; *Public Interest; Public Private Relationship

ABSTRACT

This document examines the background and the changing nature of property rights from feudal times to the present, and is intended as an educational booklet. The existence of property implies the presence of an owner, an object that can be owned, and a sovereign power to protect the property right. Property involves a number of separable rights, such as right to sell or grant easements and rights to minerals and other interests. Fee simple owners have all the property rights that individuals are permitted to hold, but their rights are not absolute. The powers reserved to the state are the rights to tax, to take for public use (eminent domain), to regulate or control use, and to escheat. In addition, governments have auxiliary powers to influence operators in their land use. Our present concept of property rights has evolved from the feudal tenure system, which viewed the king as the technical owner of all land, at the top of a pyramid of rights. Fee simple ownership reached its height in the late 1700s in England and in the mid-1800s in the United States. After that, the concept was narrowed by expanding interpretations of the powers reserved to the public. The growing acceptance of a larger role for government is related to population growth, rising incomes and living standards, increased competition for available resources, broader education, wider suffrage, and growing awareness of conservation and environmental concerns. (SV)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED328379

WHO OWNS YOUR LAND?

Raleigh Barlowe

March 1990

SOUTHERN RURAL DEVELOPMENT CENTER
Post Office Box 5446
Mississippi State, Mississippi 39762

RC017270

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Southern Rural Dev. Center
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☒ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

PREFACE

Local, state and federal governments are passing ordinances and laws which have an impact on land management. "It's my land, and I can do anything I want to with it. That old contention is almost past." Do we have a God given right to do what we want to with our land? Is there anything we can do about these eroding rights?

"Who Owns Your Land" is a publication that gives a history of land ownership rights from feudal times to the present. The reader should find the publication educational and challenging.

Originally a publication of the Michigan State University Cooperative Extension Service, it was written by Raleigh Barlowe, Ph.D., a well known lecturer and author on land use and land economics. Dr. Barlowe consented to update the publication and allowed us to reprint it. Our thanks to him. Also thanks to the staff at the Southern Rural Development Center at Mississippi State University for the artwork and printing of "Who Owns Your Land."

James E. Neal
Southern Region
Extension Forester

WHO OWNS YOUR LAND?

Raleigh Barlowe

Who Owns Your Land?

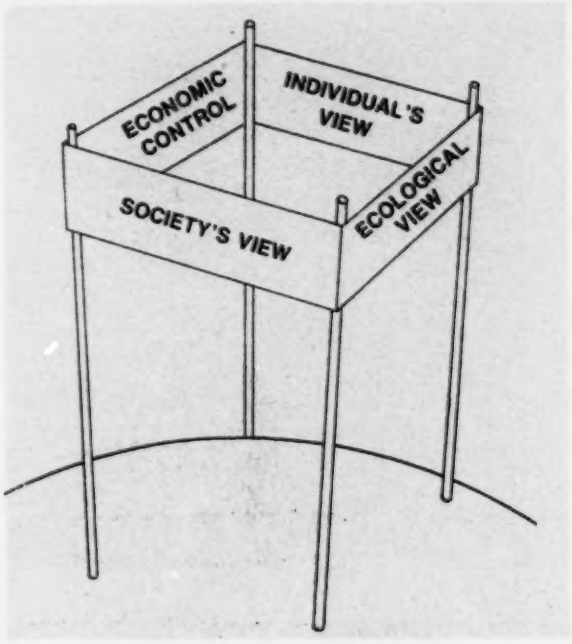
"This land is mine, mine to use and enjoy, mine to treat as I wish." This sentiment characterizes the feelings of many owners concerning their rights in land. It reflects a traditionally popular attitude about property ownership. It expresses what some have described as the "human territorial imperative."

Landowners obviously possess many rights in the properties they hold. But do they really have all of the rights they claim? Various actions by governments and courts in recent years suggest that the property rights of private owners are shared with the public and that these rights can be limited, or taken for public use, without payment of compensation.

More than this, the rights one holds in land can vary with different points of view. From an individual owner's point of view, one's property rights may seem to be complete, sacred and inviolate. Yet from the overall standpoint of society, it can be argued that these rights are shared with the state and can be modified by governmental action.

In an economic sense, owners often possess and use properties in which mortage lenders hold major financial interests. From an ecological and philosophical view, one can go even farther to assert that no living operator is more than a temporary tenant on this earth, that we are all part of the overall resource base, and that far from us owning the land, it is we who belong to the land.

Emphasis is focused here on the individual and social concepts of ownership. In addressing the question of "Who owns your land?", first attention is given to the meaning of our concept of rights in land and what this means for the future. Consideration is then turned to the changing nature of property and to the reasons why our views about property have changed in recent centuries. Final emphasis is centered on the significance of our changing concept of rights in land and what this means for the future.



FOUR VIEWS OF PROPERTY

The Nature of Property Rights

Property involves the recognized and defendable **rights** of individuals and other "legal persons" to possess, enjoy, use, and dispose of economic goods such as land and buildings. It constitutes rights that can be exercised with respect to material objects - **not the objects themselves**. The existence of property implies the presence of an owner or owners, property objects that can be appropriated to ownership, and a sovereign power (government) that will protect and defend the property right.

It is hard to conceive of property without an owner or an object that can be owned. But it is the presence of a protecting sovereign that makes the enjoyment of property possible. Rights in land exist because governments are willing to recognize and enforce them. In the absence of this protection, one would have to fight off trespassers and the rights of most owners would become meaningless.

What we commonly call property really involves a number of separable rights. These rights can be

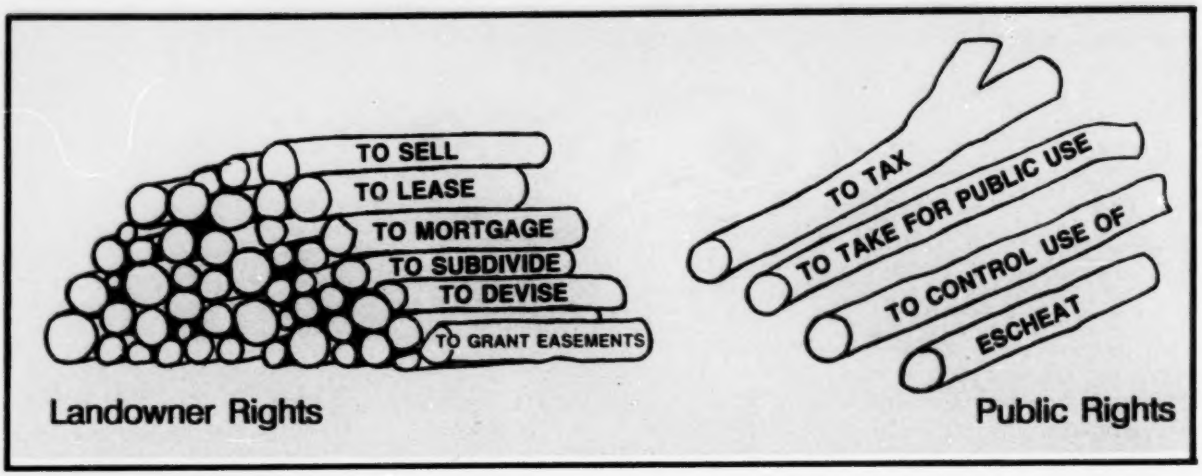
likened to a bundle of sticks, with each stick representing a separate right. Some of the more important sticks represent the rights to sell, to lease, to grant a mortgage, to subdivide, to pass on to an heir through a will (devise), and to grant easements. Other sticks involve interests such as air, water, mineral and development rights. Each of the rights represented by sticks in the bundle can be separated from the others and exercised separately, as is commonly done when one leases property to a tenant or grants a mortgage or an easement to others.

When owners have all of the rights individuals are permitted to hold in property, they are called fee simple owners. As such, they possess most of the rights in property. They can exercise and enjoy their rights to the exclusion of others. But while owners in fee simple enjoy exclusive rights, their rights are not absolute. There are four property sticks that never get into the private owner's bundle of property rights. The powers represented by these sticks are reserved to society and are exercised by its agent, the state.

CONDITIONS NECESSARY FOR EXISTENCE OF PROPERTY

5

THE BUNDLE OF RIGHTS IN LAND



The four powers reserved to the public include (1) the right to tax, (2) the right to take for public use, (3) the right to regulate or control the use of, and (4) the right of escheat.

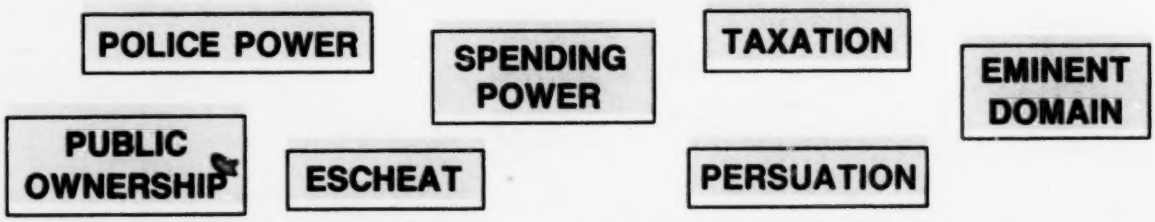
Governments, acting for society and the public have long exercised the power to tax private properties. They have a time-honored right to take property under the eminent domain power (with the payment of just compensation in this country) for public use. They use their police powers in making and enforcing regulations which can affect people in their use of land, and the power of escheat allows governments to exercise the right of possession when owners with no known heirs die without a will.

In addition to these formal rights in land, governments can utilize other auxiliary powers to influence operators in their use of land. Important among these are the public spending power, the proprietary or public ownership power, and the powers of example, persuasion, and public opinion.

Changing Views of Property Rights Over Time

History shows that the concepts of property accepted in the past have often changed with new conditions and the passing of time. Most primitive communities treated land as a resource to be held in common ownership. From this beginning, movements toward acceptance of concepts of private ownership and counter movements toward ownership by privileged classes or by the crown were common.

For our purposes, there is no need to push the long history of the changing concepts of rights in land back beyond the heyday of feudalism. Under the feudal system, which prevailed in western Europe from 1000 to 1500 A.D., every person's status in society was directly related to the rights he or she held in land. The distribution of these rights differed greatly from what we enjoy today. But they are important to us because they provide the base from which our present concept of property rights has evolved.



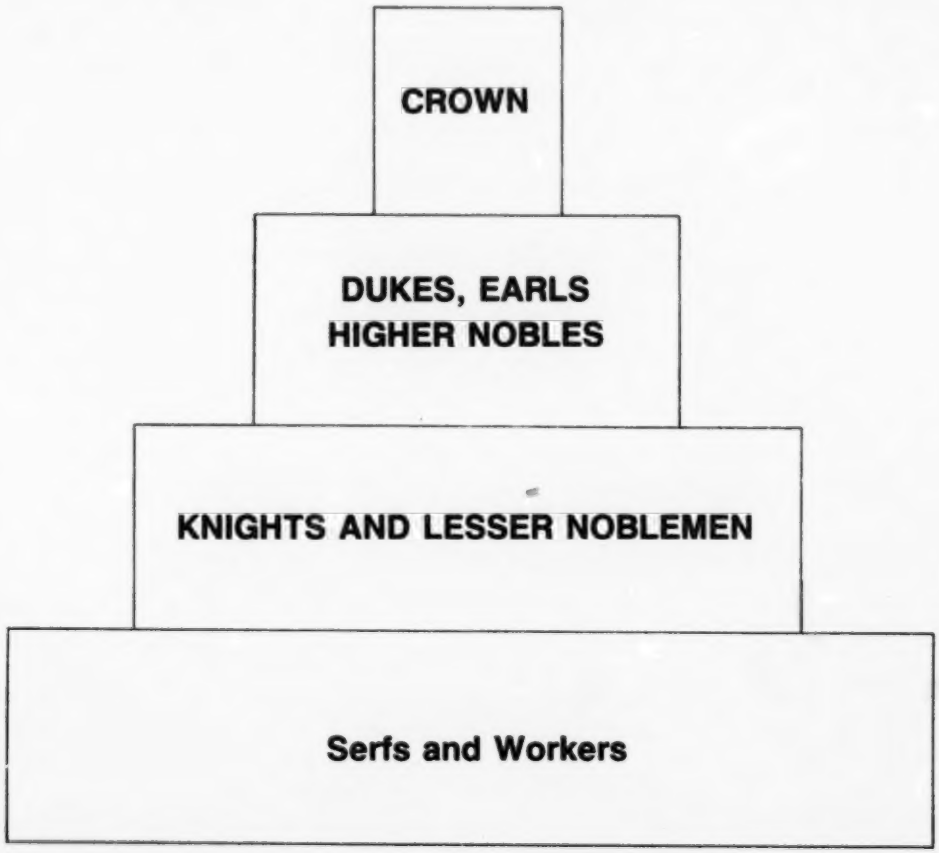
FORMAL AND AUXILIARY POWERS OF GOVERNMENTS OVER THE USE OF PRIVATE LANDS

With the feudal system that operated in countries such as England, France, and Spain, it was accepted doctrine that kings ruled by divine right. As part of this divine right, they were viewed as the technical owners of all the land of their several realms. Kings could and did make frequent grants of land to various favorites and followers. But they also retained claims to the revenues from many estates, and they could reclaim rights to the crown.

The feudal tenure system can be visualized as a pyramid of rights. A king or queen stood at the top of the pyramid and held rights that superceded those of all others. Much of the land was turned over to the dukes, barons and other noblemen who supported the crown. On a lower level, properties were often administered by lesser noblemen-by knights and lords who owed allegiance to higher noblemen. At the bottom, the entire system was supported by serfs and workers who were often bound much like slaves to their overlord's estates and who had no possessory rights to the land.

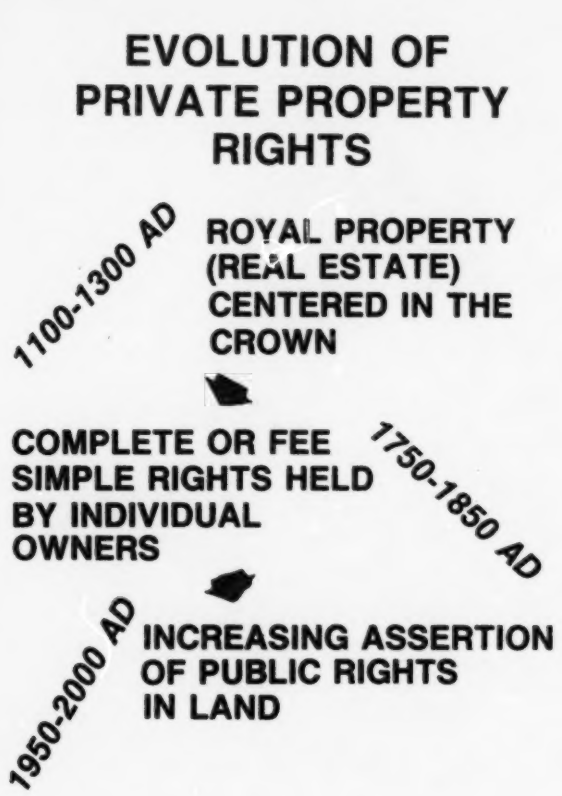
At every level, the administrators and users of land operated subject to allegiance, fealty, and knight or other military service to their superior lords. Noblemen and serfs did not always agree with their overlords. Obstinacy and resistance sometimes led to armed warfare which could lead to the rise of a new group of overlords but which more often resulted in the death or imprisonment of the rebellious parties and extinction of the rights they had held in land.

Five legal terms have come down to us from the feudal era. These terms - *property, fee, estate, interest, and right* - have similar meanings and can usually be used as substitutes for each other. Fee simple ownership



FEUDAL CONCEPT OF PROPERTY RIGHTS

signifies that an owner enjoys full ownership of all the rights or fee one can hold in property. Real estate, another commonly used term in our society, originally meant "royal property."


EVOLUTION OF PRIVATE PROPERTY RIGHTS
1100-1300 AD
ROYAL PROPERTY (REAL ESTATE) CENTERED IN THE CROWN
COMPLETE OR FEE SIMPLE RIGHTS HELD BY INDIVIDUAL OWNERS
1750-1850 AD
1950-2000 AD
INCREASING ASSERTION OF PUBLIC RIGHTS IN LAND

Feudalism reached its height in England around 1200. Events such as the signing of the Magna Charta and the establishment and growing strength of Parliament in the next few centuries brought a gradual shift from feudalism to acceptance of fee simple ownership. Charles I was the last English king to seriously argue that he ruled by divine right. Following his execution in 1649, the stage was set for full scale acceptance of fee simple ownership.

Fee simple ownership reached its height in England at about the time of the American Revolution. After that date, the concept was narrowed by expanding interpretation of the powers reserved to the public. Conditions in the United States favored an expanding view of private rights in land until the mid-1800s. Since then, there has been a gradual increase here too in public assertion of rights in land.

Evolution of Private Property Rights

With the redistribution of rights that accompanied the decline of feudalism, many common citizens acquired opportunities to enjoy property rights not available to them before. But the extent of these rights has changed. Some major changes can be illustrated with simple comparison of the rights held by heads of families of ancient Rome with those of present day owners.

Families in ancient Rome were headed by patriarchal figures who owned all the property that came with their wives together with the property they inherited and accumulated during their lives. They had the power of life and death over their families and slaves. They could choose wives or husbands for their children; order the death by exposure of newborn children; sell their wives, children, or even themselves into slavery; buy and sell slaves; and put slaves and members of their families to death.

Compare these rights with those of today's property owners. The earlier powers of execution and exposure have been outlawed. Slavery and the holding of rights in another person are now prohibited. Wives and daughters now enjoy equal rights with males; children select their own mates; and children can be protected against parental abuse and exploitation. Gone also are the earlier English rights of primogeniture and entailment of estates by which owners could provide that their estates would pass continuously to an oldest son of an oldest son.

Some of the most significant of these changes, such as the prohibition of slavery and the extension of equal rights to women, are products of the past century. Similar modifications of the scope of property rights are being accepted all over the world. This does not mean, however, that the people of all nations share the same or even similar views of property rights.

Our concept of property is a direct outgrowth of our English and Roman law heritage. Other backgrounds and legal heritages have affected the thinking of people in other parts of the world. The idea of collective farms in the Soviet Union, for example, has a precedent in the Russian mir, an earlier practice which involved periodic redistributions of individual land allotments in agricultural communities.

Property rights in the Muslim nations are dependent in an ultimate sense on interpretations of the Koran. Some property rights concepts in the Far East can be traced back to a heritage of Confucianism. And common ownership of tribal lands is practiced on several American Indian reservations.

Changes in American Views About Property

Attitudes about rights in land also have changed in the United States. Most of the white settlers who came from Europe were motivated by opportunities for acquiring land. The first settlers had a whole continent before them with thousands of acres available for the taking. Yet, they ordinarily took the modest allotments assigned to them without questioning whether this was the best land for them. They bowed and scraped to authority and took what was offered to them because this was the accepted behavior in the European societies from which they came.

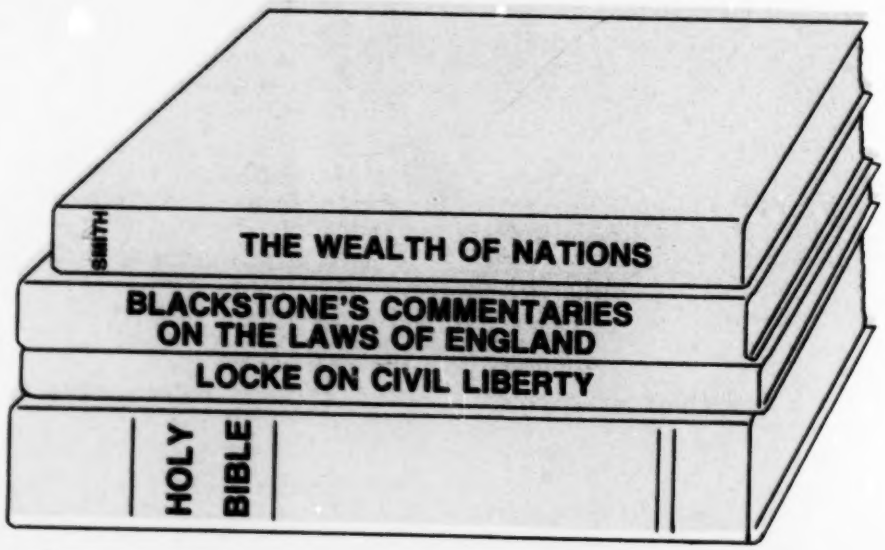
This subservient attitude gave way quite rapidly with the generations that followed. Youngsters raised on the American frontier had a different view of life. With the seemingly unlimited supply of land to the west, they were naturally impatient with the idea that they should check with officials in London or later in this country before moving to occupy new lands.

Frontier life bred new attitudes towards land as well as a spirit of independence that blossomed with the American Revolution. The leaders of that period were enthusiastic supporters of the concept of fee simple ownership. Several of them, however, were also men of intellect who sought religious, philosophical, legal, and economic justifications of their views. Biblical support came from the Old Testament which speaks approvingly of man dwelling beside his own vine and fig tree.

An additional philosophical basis for their views was provided by the writings of John Locke, an English political philosopher. In his now famous **Treatise on Civil Government** (1690), Locke argued that man has a natural right to life, liberty, and property. As he saw it, the earth was given to mankind in common, and individuals, by combining their labor with the land found in nature, could convert it to private property. This natural right concept of property gained wide acceptance in America.

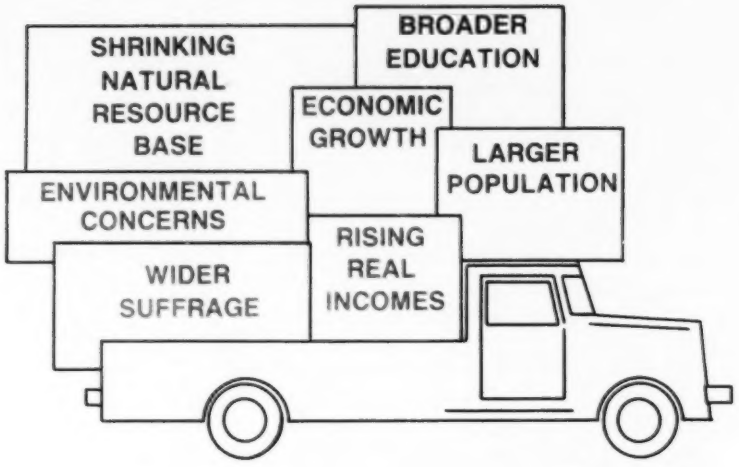
Legal support for a rugged individualistic view of rights in land was provided by Sir William Blackstone, a great British legal analyst, whose **Commentaries on the Laws of England** appeared in 1765. Blackstone defined property as "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." This much-quoted definition was accepted by many as the final word on property rights.

Adam Smith, a Scottish moral philosopher and economist, added an economic justification for a broad view of property rights with the arguments advanced in his book, **The Wealth of Nations**, pub-



INTELLECTUAL JUSTIFICATIONS
FOR PRIVATE PROPERTY

9



PRESSURES FOR A LARGER ROLE FOR GOVERNMENT

lished in 1776. Smith argued for a **laissez faire** economic system. He felt that a minimum of governmental regulations would facilitate operation of an economic system under which the activities and decisions of thousands of independent operators, each attempting to maximize his personal returns, would be coordinated by "an unseen guiding hand" to provide a maximum in public benefit.

Public policy in the United States emphasized both complete private ownership rights and a **laissez faire** economic philosophy until recent decades. These two concepts complemented each other and each tended to feed on the other. But, over time, demands have risen for more public direction of both the way in which private property rights are exercised and the manner in which the nation's economy operates.

Many citizens still cherish the individualistic views that were popular on the American frontier. Review of the many programs adopted by the state and federal governments in recent decades, however, indicates that we have moved generally towards acceptance of a larger role for government.

Acceptance of a Larger Role for Government

Why has the prevailing attitude concerning public and private rights in land changed so much in this country in the last 200 years? Some of the more important reasons involve:

1. **Increasing population numbers.** Two hundred years ago, the nation had a population of four million people. With more than 250 million people today, there is far more pressure against the available supply of land resources.

2. **Rising incomes and levels of living.** Increasing worker productivity has made it possible for the nation's citizens to enjoy higher and higher real incomes. These incomes have gone to finance loftier levels of living and have prompted greater individual demands for varied diets, better housing, modern transportation facilities, recreation opportunities, and the maintenance of a pleasant environment.

3. **Increased competition for our available resources.** Increasing population numbers and rising per capita demands have fueled expanding economic growth and have called for larger and larger supplies of raw materials. This has brought increasing competition for possession and ownership of the nation's relatively fixed resource base. Resources that once seemed unlimited have become scarce. Sharp competition for these resources has brought conflicts of interest that governments have been called upon to mediate.

4. **Broader education.** Much of our population of 200 years ago could hardly read or write. Students are now expected to go through high school, and

about the same proportion of people in the 25-29 age bracket are college graduates as were high school graduates 50 years ago. This increase in educational training has affected the attitudes of most citizens. Among other things, it has caused many of them to demand more in government services than did earlier generations.

5. **Wider suffrage.** During the late 1700's, the right to vote was limited to male property owners. Fifty years later during the Jacksonian era, this right was extended to qualified males over 21. Women secured the right to vote during the next three-quarters of a century, and suffrage for people between 18 and 21 has been accepted in recent years. Extension of the right to vote has made it possible for groups of citizens who lacked this right in the past to effectively demand new public services and new regulations that may affect the rights of property owners.

6. **Conservation and environmental concerns.** New-found affluence and growing awareness of the negative impacts numerous activities can have on environmental quality have prompted demands for public and private self discipline in those uses of resources that affect the quality of the environment. Environmentalists also are demanding that public and private actions be taken to protect our limited resources so we may extend opportunities to future generations to enjoy a standard of living comparable to that we now have.

Significance of Our Changing Rights in Land

Several observations may be made concerning the present and future significance of our changing rights in land. From a realistic point of view, it appears that *the rights we hold in property spring from society.* Individuals may feel that their rights are sacred and inviolate, that they are God-given or endowed by natural law. In practice, however, the nature of one's rights always depend upon the interpretations accepted by the societies in which we live. Rights are real only when the sovereign power, which acts as the agent of society, recognizes them and is willing to defend them.

It may also be noted that subtractions from fee simple ownership do not necessarily mean that property is less valuable or that it provides fewer satisfactions to its owners. Most residential owners grant easements to utility companies to service powerlines over or under their properties. These easements are a subtraction from fee simple ownership, but they make properties more valuable because owners need access to power and other utilities. Similarly, zoning ordinances can limit ownership rights. But they can also expand an owner's right by providing security of expectations concerning the permissible future uses of neighboring properties.

History shows that our present system of fee simple ownership evolved from the feudal concept of rights of land and that property is a dynamic and changing concept. During the last seventy years we have moved very definitely towards a broader interpretation of public powers in property. Legislative actions and court decisions have broadened the expanse of the four basic rights society holds in property. They have also caused some shifting of private right sticks to the public rights category. Private rights of control over one's air space and to pollute the air and water associated with one's land have already shifted, and other rights could follow.

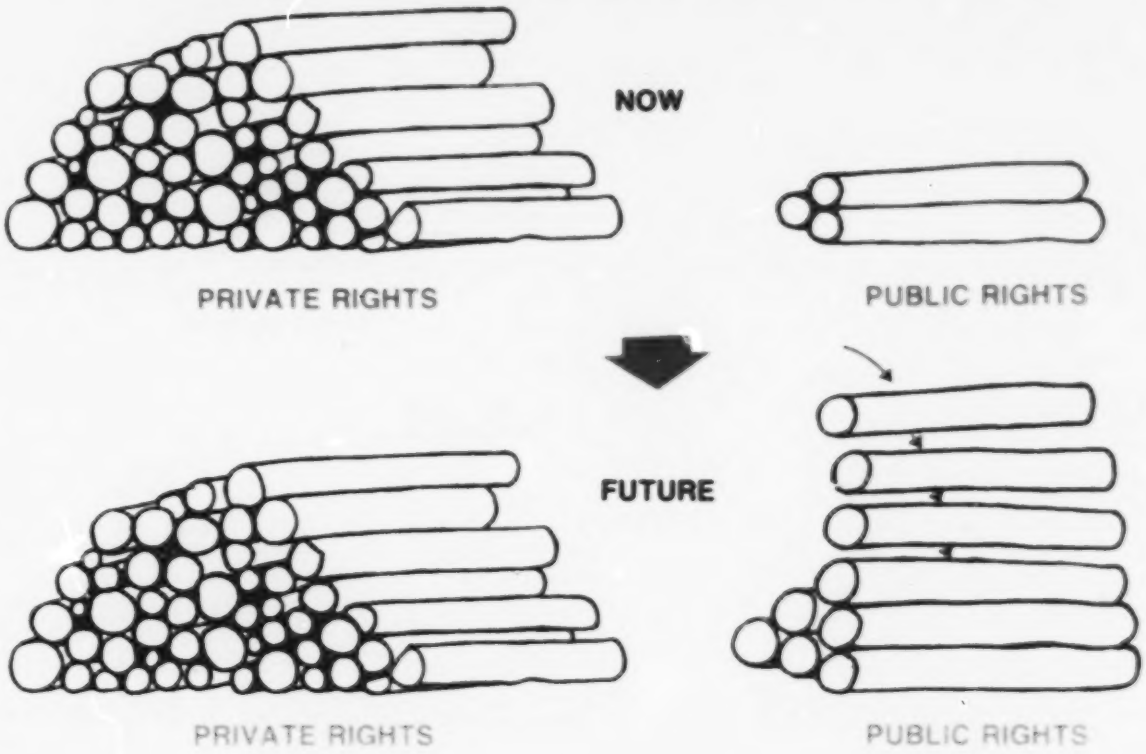
No one can be certain concerning how far the movement to broaden the powers of the public over property will go. The interests of different groups vary a great deal at this point. Those who see private ownership as an opportunity for private free agency, for the acquisition of wealth, and as freedom from outside constraints have obvious reasons for stopping or reversing the trend. Those who view land as a scarce and fragile resource, the use of which is closely intertwined with community concerns of overriding significance, may logically argue for more public supervision. Most Americans have attitudes that lie at points between these two poles.

There has been less popular interest and public concern over land use matters in the 1980s than was the case during the 1970s. This does not mean that the problem has gone away. The truth is that the potential for serious land use problems is still with us and is building up with each succeeding day because little has been done in most communities to supply realistic and workable answers to these problems.

We face a continuing prospect of added population growth, an increasingly mobile and more highly educated citizenry, and a working population with more real income to spend. All of these factors point to probable increasing competition for the use of land and growing conflicts of interest between both uses and users concerning choices of the most appropriate uses of land.

With the prospect of stronger demands and pressures for public programs to direct land use, individual owners may very well fear that changes in the attitudes of their peers will have adverse effects on their positions as property owners. They may

FUTURE TRENDS WITH PROPERTY RIGHTS



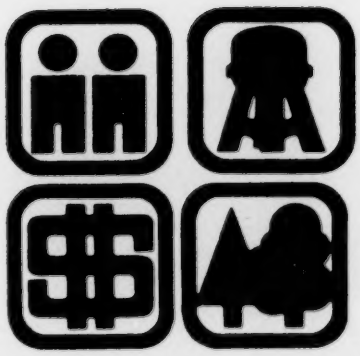
worry about the possibility of being stripped of certain of their ownership rights. Fears of this sort are for the most part unfounded. No responsible leader in the United States now recommends such a policy. Quite the opposite, we are committed as a nation to defense of our system of property rights and the incentives it provides for individual productivity.

Nevertheless, it must be noted that there is considerable sentiment for moving towards wider acceptance of a stewardship or public trust view of rights in land. Acceptance of this view calls for recognition of the fact that the rights owners enjoy in private property are balanced by responsibilities. It is to society's advantage that owners use their land for productive purposes. But, in using land, owners should avoid the use of exploitive practices, practices that can bring injuries or losses of benefits to others, or practices that can work against the basic interests of others in their communities.

Educational programs should accompany the proposal and acceptance of new land use programs. People should be fully advised of the effects proposed programs can have on them. They should exercise their right to oppose those programs that work against their best interests. They should be encouraged to evaluate alternative approaches that can be used to attain the same objectives. And if and when programs are adopted, they should demand that adequate funds are allocated for their implementation and that their management be entrusted to people who are committed to making them work.

Finally, it should be recognized that while some proposals for land use programs may be eminently desirable, some may not. Various considerations will affect the positions people take on individual proposals. In every case, however, proposals for adjustments in the rights we hold in land should be carefully analyzed so that our decisions and actions respecting them will reflect rational thought and concern about the present and future well-being of the American people.

The SRDC is one of four regional rural development centers in the nation. It coordinates cooperation between the Research (Experiment Station) and Extension (Cooperative Extension Service) staffs at land-grant institutions in the South to provide technical consultation, research, training, and evaluation services for rural development. This publication is one of several published by the Center on various needs, program thrusts, and research efforts in rural development. For more information about SRDC activities and publications, write to the Director.



Southern Rural Development Center
Box 5446
Mississippi State, MS 39762

The Southern Rural Development Center is an Equal Opportunity Organization providing research, educational information, and other services only to individuals and institutions that function without regard to race, color, sex or national origin. SRDC is an Equal Opportunity Employer.

SRDC No. 126